

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re: Roy Menton, and
Maureen Menton,

Case No. 10-31635
Chapter 13

Debtors.

ORDER DIRECTING ATTORNEY SEAN SERPE TO SHOW CAUSE AS TO WHY SANCTIONS OUGHT NOT BE IMPOSED, PRIOR FEES OF \$4,000.00 DISGORGED, AND REFERRAL BE MADE TO THE DISTRICT COURT FOR CONSIDERATION OF HIS BEING BARRED FROM PRACTICE IN THE NORTHERN DISTRICT OF NEW YORK

On March 22, 2011, this court held a hearing on the continued confirmation of Debtors' chapter 13 plan. Pursuant to a court order issued on March 2, 2011 ("March 2 Order," Docket No. 46), Attorney Sean Serpe ("Attorney Serpe") was directed to file, among other things, an affidavit disclosing the timing, amount and basis for all fees paid to his firm by or on behalf of the Debtors "in 2009, 2010 and 2011 up to the present and that such affidavit address any funds held on behalf of Debtors in a trust account for any reason..." The March 2 Order further ordered that the directives therein were to be completed by March 15, 2011 to allow the trustee adequate time to review the filings prior to an adjourned hearing date set for March 22, 2011 at 2:00 p.m. or, if not possible to comply with the March 15th deadline, Attorney Serpe was to request an adjournment. None of the filings were submitted, as directed in the March 2 Order, nor was a request for an extension of time made. Instead, at approximately 2:00 p.m. on March 21, 2011, the afternoon prior to the continued confirmation hearing, Attorney Serpe filed a motion to dismiss Debtors' case ("Motion to Dismiss," Docket No. 48) and immediately contacted chambers' staff to notify the court of the filing and to request an adjournment

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of the continued confirmation hearing. The court denied his request due to his failure to comply with this court's local procedures for adjournment requests and for his failure to abide by this court's March 2 Order.

Notwithstanding the court's denial of his request for adjournment, Attorney Serpe failed to appear at the continued confirmation hearing held on March 22, 2011 at 2:00 p.m. At such hearing Guy A. Van Baalan, Esq. appeared on behalf of the Office of the United States Trustee, Lynn Harper Wilson, Esq. appeared on behalf of Mark Swimelar, chapter 13 trustee, David C. Temes, Esq. of Green & Seifter Attorneys, PLLC appeared on behalf of Citizens Bank of Cape Vincent, and Debtor Roy Menton appeared without the presence of counsel.

Upon the court's inquiry, Debtor Roy Menton stated that he paid Attorney Serpe \$2,000.00 to file the Debtors' 2009 case ("2009 Case," Case No. 09-33356), which was dismissed for the failure to file a chapter 13 plan (Docket No. 32). Debtor Roy Menton also stated that he paid Attorney Serpe an additional \$2,000.00 to file the instant case in 2010 ("2010 Case"). These statements are contrary to the 2016(b) statements filed by Attorney Serpe in both the 2009 Case and the 2010 Case, wherein he certifies in both instances that he received no compensation for the filing of bankruptcy cases (Docket No. 8 and Docket No. 8, respectively).

Upon further inquiry, Debtor Roy Menton represented that he did not want his case dismissed and neither he nor his wife, Debtor Maureen Menton, authorized Attorney Serpe to file the Motion to Dismiss.

Based upon the record of proceedings in this case, as well as the record in the 2009 Case, it is

ORDERED that a hearing shall be held **at 3:00 p.m. on April 26, 2011**, at the United States Bankruptcy Court, James M. Hanley United States Courthouse & Federal Building, 2rd Floor, 100 South Clinton Street, Syracuse NY at which Attorney Serpe is directed to appear to show cause as to why he should not be sanctioned, disgorge prior fees of \$4,000.00, and referred to the District Court for consideration of his being barred from practice in the Northern District of New York; and it is further

ORDERED that Debtor Roy Menton appear at the April 26, 2011 hearing as well as Debtor Maureen Menton, if her work schedule permits her to be present.

So Ordered.

Dated: March 25, 2011
Syracuse, New York



Hon. Margaret Cangilos-Ruiz
United States Bankruptcy Judge